

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Ernest E. Hyne II)
Map 132-03-0, Parcel 9.00) Davidson County
Residential Property)
Tax Years 2005 and 2006)

CORRECTED
INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$245,500	\$412,200	\$657,700	\$164,425

Appeals have been filed on behalf of the property owners with the State Board of Equalization on September 27, 2005 and on August 22, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A hearing was conducted on April 20, 2006 at the Davidson County Property Assessor's Office. Present at the hearing were Ernest Hyne II, the appellant, and Davidson County Property Assessor's representative, Jason Poling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 795 Norwood Drive in Nashville, Tennessee.

The taxpayer contends that the property is worth \$305,733 based on the data and exhibits attached to the appeal on a market value basis. Additionally, the county has measured the square footage of the subject property incorrectly.

The assessor contends that the property should remain valued at \$657,700.

The presentation by the taxpayer shows that a lot of time and effort was put into preparing for this hearing. The taxpayers exhibits (collective exhibit #1) shows that thoughtful planning and research were used in the compilation; however, the germane issue is the value of the property as of January 1, 2005 and January 1, 2006.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that “[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . .”

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$485,000 based upon the exhibits and testimony of the taxpayers. Mr. Hyne produced comparable sales of properties in the

areas. When determining elements of comparison, there are characteristics of properties and transactions that will explain the variance of prices paid for real estate.

The normal analysis involves using elements of comparison for a given subject through market research and supporting data.

This type of quantitative analysis is also called paired data analysis, using sales and resales of the same or similar properties.

There are 10 basic elements of comparison that should be considered in sales comparison analysis:

1. Real property rights conveyed
2. Financing terms
3. Conditions of sale
4. Expenditures made immediately after purchase
5. Market conditions (time)
6. Location
7. Physical characteristics – e.g., size, construction quality, condition
8. Economic characteristics – e.g., expense ratios, lease provisions, management, tenant mix
9. Use (zoning)
10. Non-realty components of value¹

In this case, number six (6) and number nine (9) are in the administrative judge's opinion, important factors for determining value of the subject property. The presumption of correctness that attaches to the decision from the county board is just that, a rebuttable presumption that can be overcome by the taxpayers' presentation.² To hold that it is a conclusive presumption would essentially eliminate the right of a taxpayer to present evidence, that scenario is not contemplated by the Assessment Appeals Commission. In this case, the administrative judge is of the opinion that the taxpayer has presented clear and convincing evidence as to valuation of the subject property.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981). In this case, the taxpayer has sustained that burden.

Mr. Hyne's property is located on Norwood Drive, the *only* access road to Father Ryan High School. Mr. Hyne showed by exhibits and depositions that the traffic congestion in the mornings when school opens (7:15 a.m. to 7:45 a.m.), in the afternoon when school lets out (2:30 p.m. to 3:30 p.m.) and when events occur (taxpayer submitted

¹ *The Appraisal of Real Estate*, 12th ed., 2001, pp 426-427.

² While there is no case law directly on point, several cases and Attorney General Opinions appear to stand for the proposition that: "if the court finds that evidence is sufficient to rebut this presumption, the court shall make a written finding. . . . *Hawk v. Hawk*, 855 S.W. 2d 573 (Tenn. 1993) also "[a] court is not required to assume the existence of any fact that cannot be reasonably conceived." *Peay v. Nolan*, 157 Tenn. 222, 235 (1928), 1986 Tenn. AG LEXIS 64, 86-142, August 12, 1986. In administrative proceedings, the burden of proof ordinarily rests on the one seeking relief, benefits or privilege. *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).

exhibits which showed extra activities occur almost seven days a week) [Tab D, Exhibit #1] diminish the value of his home.³ The location of the subject shows that it is a corner lot (Franklin Road and Norwood Drive) which at first glance may make it desirable real estate. However, with the presentation of the evidence regarding the traffic situation, the diminished use and enjoyment must also be taken into account.

Mr. Hyne demonstrated that with other sales in the area when prospective buyers first look at property, they are very interested and a purchase looks hopeful; however, once they view the same parcel during one of the enumerated events, e.g. school times, the buyers are no longer interested or want a significant reduction in price.

Transcripts from the Oak Hill Board of Zoning Appeals hearing showed that when the school was first contemplated, these issues were known to the community but they have been largely ignored. As a result, the homeowners on Norwood Drive have been left in a situation where their property values have been placed at risk.⁴

The taxpayer also produced affidavits (not objected to by the county's representative) from former property owners of Norwood Drive showing diminished values and complications in selling the property (Tab C, Exhibit #1).

Based on the clear and convincing evidence submitted by the taxpayer, the administrative judge is of the opinion that a reduction of 20% in the land value warranted by documentation and evaluation of the evidence⁵ and 20% reduction in improvement by functional obsolescence.⁶

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005 and 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$196,400	\$329,760	\$526,160	\$131,540

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12

³ Over 2,000 cars a day travel this road to and from Father Ryan High School.

⁴ Father Ryan High School is the largest private high school in Davidson County having well over 1,000 students (Tab A, Exhibit #1).

⁵ Because of its fixed location, real estate is subject to external influences that usually cannot be controlled by the property owner. *The Appraisal of Real Estate*, 12th ed., 2001, p 363.

⁶ An element of depreciation (diminished value) resulting from deficiencies in the structure. *The Dictionary of Real Estate Appraisal*, 4th ed., 2002 Functional Obsolescence is caused by a flaw in the structure, materials or design of the improvement. . . . *The Appraisal of Real Estate*, 12th ed., 2001.

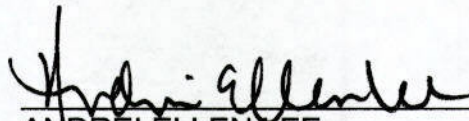
of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”**

Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 25th day of September, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Ernest E. Hyne II
Jo Ann North, Assessor of Property